

UNITED STATES PATENT AND TRADEMARK OFFICE

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U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: MARC BEAUJOIN, THOMAS ALOFS
AND PAUL ARMAGNAT

Application No. 10/075,113

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on November 3, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matter requiring attention prior to docketing is identified below.

APPEAL BRIEF

Summary Of Claimed Subject Matter

Appellant filed an Appeal Brief dated June 26, 2006, in response to the Notification of Non-Compliant Appeal Brief mailed June 13, 2007. The Appeal Brief is not in compliance with 37 CFR § 41.37(c) effective September 13, 2004.

37 CFR § 41.37(c) states in part:

(v) *Summary Of Claimed Subject Matter*. A concise statement of each ground of rejection presented for review.

An in-depth review of the Appeal Brief indicates that the following sections are missing from the Appeal Brief. The Appeal Brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claims argued separately, every means plus functions and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with references to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).

The “Summary of claimed subject matter” appearing on page 2-6 of the Appeal Brief filed June 26, 2007, is deficient because it does not separately map independent claims 9, 11, 14 and 20 to the specification.

When the Office holds the brief to be defective solely due to appellant’s failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office’s requirement will result in dismissal of the appeal. See MPEP § 1215.04 and §711.02(b).

EXAMINER’S ANSWER

In the Examiner’s Answer mailed May 3, 2007, the Examiner rejected claim 12 under 35 U.S.C. 103(a) as being unpatentable over Kim et al. (US-6108802), in view of Martens (US-5751727), in view of Zorian et al. (US-6330696). It is noted that the Zorian reference has not been listed in the Evidence Relied Upon section.

INFORMATION DISCLOSURE STATEMENT

Appellant filed an Information Disclosure Statement (IDS) dated March 13, 2002. There is no indication on the record that the above Information Disclosure Statement has been signed by the Examiner. MPEP § 609 requires the Examiner to consider any Information Disclosure Statement filed by Applicant if timely submitted. A written communication notifying appellant of the Examiner's consideration of the above Information Disclosure Statement is required.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

- 1) hold the Appeal Brief filed June 26,, 2006, defective;
- 2) notify the appellant to submit a "paper" which corrects the Appeal Brief, Summary of Claimed Subject Matter under 37 § 41.37(c)(1)(v);
- 3) acknowledgement and consideration of any "paper" that may be submitted by Appellant in response to the Notice of Non-Compliance to correct the Appeal Brief as required by 37 § 41.37(c)(1)(v);
- 4) issue and mail a PTOL-90 having the missing references listed under the Evidence Relied Upon section of the Examiner's Answer;
- 5) consider the Information Disclosure Statement filed March 13, 2002; and

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6) for such further action as may be appropriate.

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PJN/tsj

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